FAIR PRACTICES COMMISSION ANNUAL REPORT

FAIR PRACTICES COMMISSION ANNUAL REPORT

An independent office working to ensure fair practices at the Workplace Safety and Insurance Board of Ontario

FPC
CPÉ

Contents

From the Commissioner 1

Fair Practices Commission 2

Systemic Solutions 3

Individual Resolutions 9

Our Complaint Process 15

Education and Outreach 24

Budget 25

Également disponible en français

Fair Practices Commission
123 Front Street West
Toronto, Ontario
M5J 2M2

www.fairpractices.on.ca

Phone
416-603-3010
866-258-4383

TTY
416-603-3022
866-680-2035

Fax
416-603-3021
866-545-5357

From the Commissioner

THE Commission's goal is to ensure fair treatment and fair processes for injured workers, employers and service providers who are engaged with the WSIB. Over the past eight years, we have seen significant changes in WSIB processes that address systemic or recurring issues. The systemic solutions and case summaries in this report show some of our achievements in 2011.

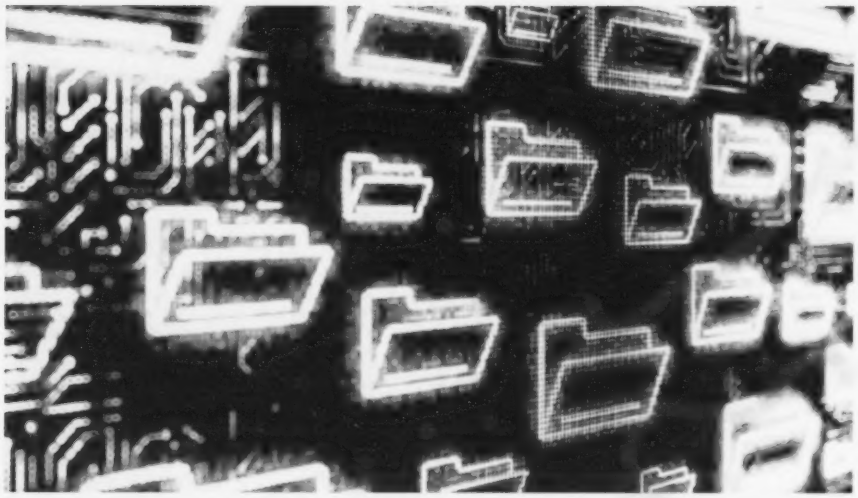
This year marked a number of firsts for the Commission:

- For the first time in the Commission's history, complaints to our office exceeded 2,000. We opened 2,032 files in 2011, an 11 per cent increase over 2010.
- We resolved most individual complaints within three days, our fastest resolution time since the office opened.
- We sent out our first e-newsletter in the fall with a promise that we will start to take complaints by email in early 2012.

This year, Commission specialists conducted fewer inquiries into fairness issues because WSIB staff acted quickly to resolve issues in the first instance, a sign of the WSIB's commitment to improving its service delivery.

As always, I want to thank our Commission staff. Without their ongoing professionalism, commitment and pure hard work, we could not meet our goal so effectively.

— Laura Bradbury, Commissioner



OMBUDSMAN FOR THE
WORKPLACE SAFETY AND INSURANCE BOARD

Fair Practices Commission

- We are advocates for fairness.
- We look at fairness in terms of process, decision-making practices and consistency.
- We look at complaints when the WSIB has not resolved the concern.
- We are independent of WSIB's management. The commissioner reports directly to the board of directors, the governing body of the WSIB.
- We operate according to a Charter that sets out our mandate and authority.
- We conduct inquiries and investigations, as necessary.
- We make recommendations that may include asking the WSIB to change processes, practices and operational guidelines.
- We report publicly.

Systemic Solutions

THE Commission's goal is to ensure fair treatment and fair processes for injured workers and employers in their dealings with the WSIB.

One of the most effective ways for the Commission to meet our goal is to identify and address systemic or recurring issues at an early stage. The Commission reviews each case to see if it has broader significance. We also review our statistics to see if trends are developing.

This proactive model helps us address concerns before they become persistent problems. The commissioner meets regularly with senior WSIB staff about system-wide fairness issues. She also reports her findings quarterly to the WSIB's board of directors.

Here are some of the systemic issues the Commission addressed in 2011.

ON-GOING ISSUES

Work Reintegration Complaints Office

The 2009 KPMG value-for-money audit of the Labour Market Re-entry (LMR) program recommended an independent complaint process for workers who have concerns about the contractors who provide retraining.

Since 2009, the WSIB has reorganized its return-to-work programs, bringing most of the former LMR processes in-house. The new model is called Work Transition Services (WT) and details are set out on the WSIB website. The program significantly reduced the number of external contractors. The change also required a new complaints process.

The commissioner met throughout the first half of 2011 with the director of Work Reintegration, Program and Provider Effectiveness, to discuss complaint models. In June, the WSIB announced the Work Reintegration Complaints Office as a new resource for workers concerned about the quality of services they receive from external providers as part of their LMR or work transition plan.

The complaint process is set out on the WSIB website. The new office acts on complaints and tracks trends in complaints about providers.

The Commission will follow up and review the office's activities in June, 2012.

Return phone calls

Complaints about delays in returning telephone calls increased by 15 per cent in 2011. In response to this recurring issue, the WSIB has added a new centre, headed by a vice-president, to develop new telephone systems that are up to date and responsive to callers' needs.

Occupational Disease Services Division

The commissioner and deputy commissioner continued to meet regularly with the vice-president and director of the Occupational Disease Services Division. Complaints to the Commission about occupational disease cases continued to decline in 2011.

Older workers

In 2010, the commissioner raised the issue of information about the potential limit on benefits for workers who are injured at age 63 or older.

The information was added to the WSIB website in 2011 as an adjudication support document.

The commissioner also helped clarify the applicable "decision date" for older workers who may be eligible for the new self-directed work transition option. The option was established in the December 1, 2010 Interim Work Reintegration Policies.

NEW ISSUES

Appeals delays

The Commission received complaints throughout the year about the length of time it was taking to schedule oral hearings in the Appeals Division. Parties wait about five months before a file is assigned to an appeals resolution officer (ARO). Hearings are then scheduled based on the ARO's availability. As a result, it may take a year or longer to receive an oral hearing and a decision.

The commissioner reported the situation to the WSIB board. At its meeting in December, the board asked for detailed information on the appeals backlog and on appeal processes so that it can assess the situation.

"I really appreciate you calling me. Nobody has ever listened or talked to me the way you have."

INJURED WORKER

Access to claim files

A worker representative wrote to the Commission with concerns about delays in obtaining access to workers' claim files. The delay is a problem for workers who want to appeal a WSIB decision since they cannot begin the appeal process until they obtain access. The representative provided examples of cases in which he experienced delays. The representative had previously raised his concerns with senior management at the WSIB but told the Commission that the problem is ongoing.

A Commission specialist reviewed the files, as well as similar complaints brought to the Commission's attention. The review revealed that, in the majority of the cases, delays arose in the operations area and not in the Access Department.

The commissioner and a specialist met with the vice-president involved. Systemic concerns were discussed, including delays in referrals to the Access Department, difficulties related to WSIB's referral-for-access form, the various steps involved in the access process, and cases where status letters were not sent to parties. The vice-president responded to the worker representative's specific concerns and took steps to address the larger systemic concerns.

In December, the vice-president sent the Commission a draft of the revised referral-for-access form. The revised form is simple and easier to understand and should help reduce delays.

Clothing allowance

The Commission received a number of complaints from a legal clinic about a change in the WSIB's practice concerning clothing allowances for workers with assistive devices whose entitlement is based on a 2001 policy exemption. The legal clinic also raised the matter with the WSIB president's office.

The commissioner and a specialist met on March 30 with the executive director of Health Services to review the history of the policy exemption and the reasons that gave rise to the current issue. Following this meeting, the president's office told the commissioner that the matter was resolved – the WSIB will continue its current practice. The legal clinic and the Commission are satisfied with the response.

Specialized Claims/ Permanent Benefits Sector

This new sector (now part of Occupational Disease and Specialized Services or ODSS), the largest at the WSIB, was established in May to handle pre-1990 cases, WSIB employee claims (BEC) and 72-month lock-in cases. The commissioner reported to the WSIB board in November that this sector accounted for the highest number of complaints in the third quarter and the Commission had conducted twice as many inquiries into complaints about this sector than with other sectors.

The WSIB said some of the issues related to training new staff and higher numbers of service requests than anticipated.

The commissioner and deputy commissioner met in December with the vice-president to discuss the issues raised by the complaints. The Commission agreed to provide statistics for the sector that will identify complaints for each of pre-1990, post lock-in and BEC cases to help address specific issues within each part of the sector.

OPERATIONAL ISSUES

Government Employees Compensation Act cases

The Commission received several complaints from workers covered under the Government Employees Compensation Act (GECA), such as postal

workers, that they received little information about the decision-making process and experienced delays in receiving initial entitlement decisions.

The Commission asked about the information these workers receive about the GECA process. The WSIB noted that it administers the claims under a written agreement with the federal government. Under the agreement, the WSIB does not have jurisdiction to make initial entitlement decisions until it receives a Form 7 counter-signed by the federal agency, and this process adds delay.

However, the Operations, Planning and Implementation Division told the Commission it will issue a general reminder to adjudicators that they are expected to speak with workers to explain the processes in GECA cases and to give workers claim status information when they contact the WSIB.

Direct deposit

Several workers complained to the Commission that the WSIB changed the date of their benefit payment when they switched to direct deposit and this led to problems with their bill payment arrangements. The Commission suggested that workers receive advance notice that the benefit payment date might change when they switched to direct deposit.

In response, the WSIB updated the information on its website to provide this notice.

The Commission has received fewer complaints about this issue since the notice was added.

Individual Resolutions

THE Commission acts as an independent voice for fairness in individual cases that workers or employers bring. If the Commission identifies a fairness issue, we act quickly to resolve the problem. We are assisted in this by the ever-increasing responsiveness of WSIB front-line staff and managers.

COMPLAINTS ABOUT THE DECISION-MAKING PROCESS

Practice guidelines for 72-month review

An injured worker's husband called the Commission with concerns about the WSIB's 72-month lock-in decision-making process. The injured worker had been on full loss-of-earnings benefits since September 2007 when the WSIB determined the worker was not capable of continuing in her labour market re-entry (LMR) program due to a back injury she suffered while participating in the program. The worker did not hear again from the WSIB until April 2011 when the case manager called to discuss her participation in further work transition services. The worker told the case manager she was physically unable to consider resuming her LMR program.

The case manager decided the worker's inability to participate in LMR was the result of injuries she suffered in a car accident in March 2008. Thus, the worker no longer had an earnings loss related to her compensable accident. As a result, the worker's benefits would be locked in at zero to age 65. The worker disputed this finding, and the case manager told her she would reconsider the decision if the worker submitted medical reports related to the car accident.

The Commission spoke to the manager about the decision making and reconsideration processes, noting that the December 1, 2010, Practice Guidelines and Special Circumstances for lock-in reviews requires advance written notice of a proposed change where a worker is on full benefits before the lock-in date as well as an opportunity to provide any new evidence before a decision is made. The manager agreed that the worker was not given the opportunity to submit the medical reports

related to the car accident. He told the case manager to extend benefits until the medical reports were received and reviewed.

Employer penalty process

An employer representative contacted the Commission about the fairness of WSIB's process for the payment of a penalty based on pre-determined premium rates. The WSIB's position was that the employer owed $19,000 in penalties and accrued interest. The employer thought it unfair of the WSIB to calculate interest and penalties while it was negotiating with the employer, especially since the final agreed-upon payroll amount was only $152.

The Commission met with the manager and assistant director involved to determine whether the employer received enough notice that the penalties and interest would accrue during negotiations. The assistant director asked the manager and account specialist to review the employer's accounts. As a result of the review, and in light of the small payroll amount, the WSIB decided to waive the $19,000 penalty.

The employer was pleased that the company would not have to appeal.

"No words can express how grateful I am to have spoken to you at such a critical and desperate time."

INJURED WORKER

Repairing a wheelchair

A worker suffered a spinal cord injury in 1985 and, as a result, used a wheelchair. The worker contacted the Commission in January about serious delays in having his wheelchair repaired or replaced. The WSIB told the worker:

- He needed an assessment by an occupational therapist before a new wheelchair could be ordered, but the therapist was not available.
- Before a decision could be made about the wheelchair, the WSIB needed to install an elevator in the worker's home.

A Commission specialist contacted the manager who made arrangements for a different occupational therapist to meet with the worker and decided that the wheelchair arrangements could be made immediately, without waiting for a decision on the elevator.

Independent medical examinations

Two workers complained to the Commission about the WSIB's decision to send them for an independent medical examination (IME) when there was already considerable current medical information on file.

In one case, the WSIB found the worker was not entitled to benefits for a psychiatric condition, based solely on the IME's report. The IME's report was contrary to the other reports on file. The WSIB decision did not say why the IME's report was preferred.

In the other case, the worker complained about the same IME's unprofessional treatment during the assessment. The worker also complained about the WSIB's decision to terminate his benefits based solely on the IME's report without analyzing the other medical evidence on file.

The Commission inquired into the processes for selecting IMEs and making referrals to them. A Commission specialist spoke with the manager, the sector director and the vice-president. The commissioner spoke with the associate medical director of Clinical Services. As a result of these inquiries, the WSIB's operating area clarified that, where a medical assessment is needed, referrals will be made to WSIB-contracted services such as regional evaluation centres and specialty clinics, and not to IMEs.

In each case the Commission reviewed, the WSIB arranged to have the worker re-assessed at a WSIB specialty clinic.

Accommodating work restrictions

In January, a case manager told an injured worker she was fit to return to her pre-injury employment as a heavy equipment operator despite a finding by the regional evaluation centre that the worker had permanent injury-related restrictions in her left shoulder. The worker submitted detailed information about her job duties to support her position that she needed job modifications to perform the work. She asked for a review of her regular job duties.

The worker contacted the Commission after receiving no response to her, and her lawyer's, calls and letters. A Commission specialist spoke to the manager, who reviewed the file and asked the case manager to call the worker and arrange for a referral to a return-to-work specialist. The worker and employer began working with the specialist to ensure that her job can accommodate her restrictions.

COMPLAINTS ABOUT THE APPEALS PROCESS

Worker complaint: Delayed appeal decision

A worker contacted the Commission about a lengthy delay in receiving a decision from an appeals resolution officer (ARO). After the Commission made inquiries, the worker received his decision. However, the worker was concerned that the decision to deny benefits did not explain why it had taken since 2005 to complete his appeal.

The Commission contacted the manager who agreed to review the file and give the worker a detailed explanation of the steps taken to process his appeal. The manager acknowledged there had been a significant number of delays in the final resolution of the worker's appeal including several drawn-out returns to the operations division. The manager agreed the delays were unacceptable and apologized to the worker on behalf of the Appeals Branch and the WSIB.

Employer complaint: Appeal on transfer of costs

An employer representative contacted the Commission about delays and lack of notice concerning an appeal of a transfer-of-costs decision.

The injury occurred in June, 2007. One year later, the employer representative was notified that 100 per cent of the costs of the accident were being transferred to another Schedule 1 employer. The employer representative heard nothing more until an appeals resolution officer (ARO) called in October 2011 to schedule a hearing about the transfer of costs. The ARO confirmed that the other employer had filed the objection within the six-month limit but did not decide to go forward with the objection until early in 2011, three years after the cost transfer and four years after the injury. The first employer thought it was disadvantaged by this delay and lack of early notice. It had lost track of witnesses and did not have all the records it would need for the appeal.

The Commission contacted the executive director of the Appeals Branch who responded in writing to the employer representative's concerns. The executive director confirmed that the WSIB allows parties to "bookmark" their appeal within the six-month appeal limit. However, there is no time limit for filing the objection form, which triggers the involvement of the Appeals Branch.

"Thank you so much. You made my day. Now I don't feel like I'm being ignored."

INJURED WORKER

The executive director agreed changes could be made to ensure that other parties are made aware as soon as possible of a potential appeal in a transfer-of-costs case. She spoke with the management of the Transfer of Costs unit and said a new procedure will be put in place to ensure that the non-objecting party is notified at two points: when an employer notifies the WSIB of its intent to object and when the objection form is returned confirming the intention to pursue the appeal.

The executive director also directed the AROs who deal with transfer-of-cost appeals to review files when they are assigned and ensure that all interested parties receive all the submissions and evidence.

Our Complaint Process

OUR MANDATE

When someone contacts the Commission with a complaint, our first step is to decide if the complaint is within our mandate. About two-thirds of complaints fall within our jurisdiction.

OUR USERS

Most complaints to the Commission come from injured workers and their representatives.

Mandate **Our users**

OUR SERVICES

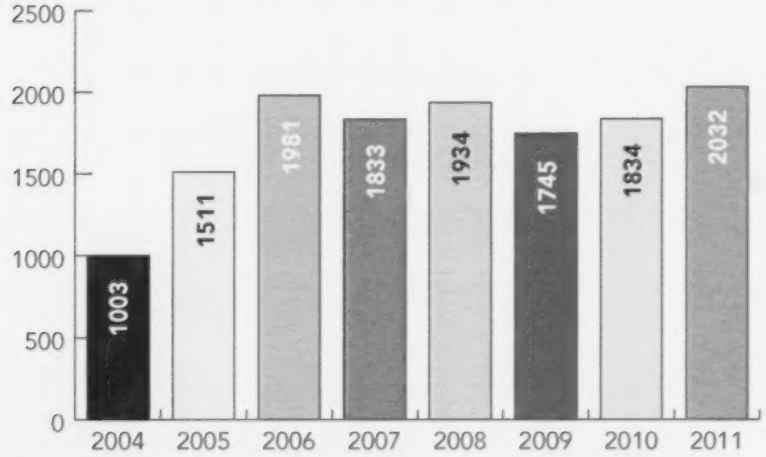
If a complaint is within our mandate, the next step is to decide which service is needed. We can:

- coach callers to take the next step with the WSIB, for example an appeal
- refer callers to the right WSIB staff person to start the complaint process
- make inquiries with the WSIB about a complaint and reach a quick resolution
- review unresolved fairness issues and make further inquiries
- identify broader or systemic issues for more in-depth action.

KEEPING TRACK

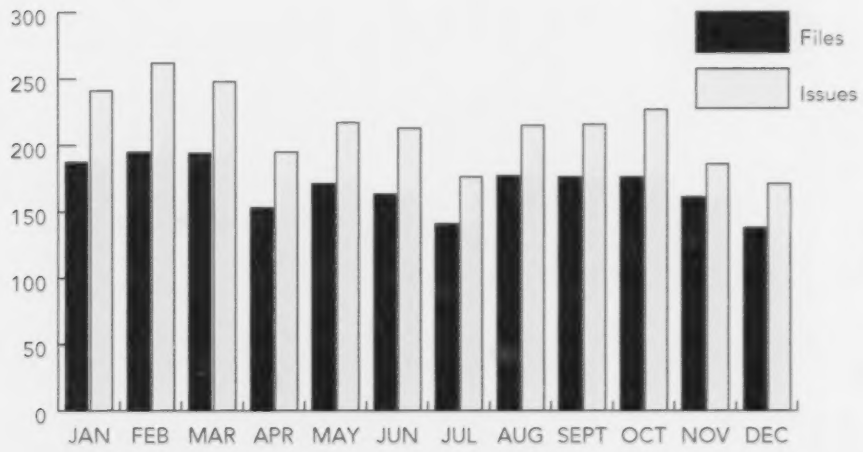
For the first time, complaints to the Commission exceeded the 2,000 mark. We opened 2,032 files in 2011, compared with 1,834 files in 2010, an increase of 11 per cent.

EIGHT-YEAR SUMMARY OF FILES OPENED



ISSUES PER FILE

In 2011 the Commission opened 2,567 issues, an average of 1.3 issues per file, an increase of 12 per cent from 2010, when the Commission opened 2,286 issues.

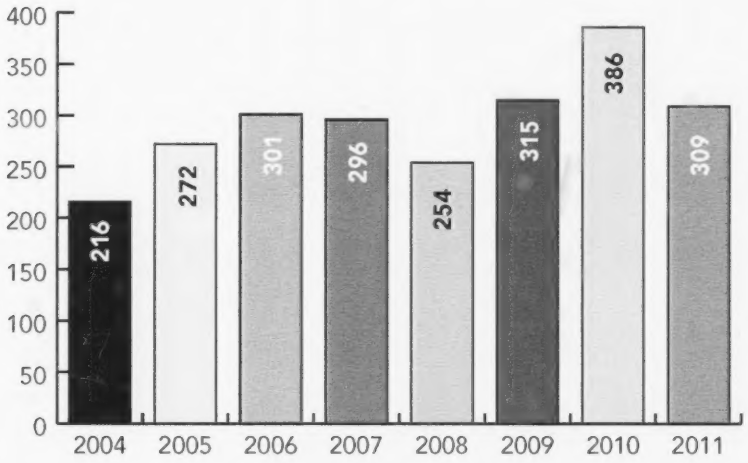


A file often contains more than one issue. For instance, if a worker thought the case manager treated her rudely when she complained about not getting a return phone call, that one file would have two issues.

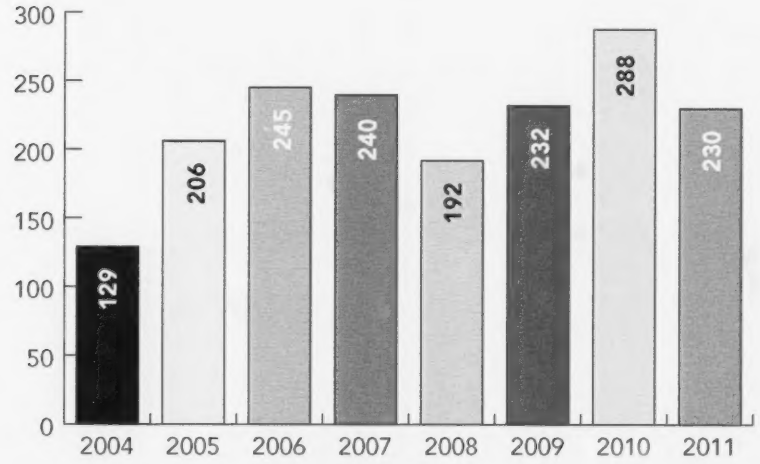
INQUIRIES

The Commission conducts an inquiry where we identify a potential fairness concern and the complainant has been unsuccessful in resolving the concern directly with the WSIB.

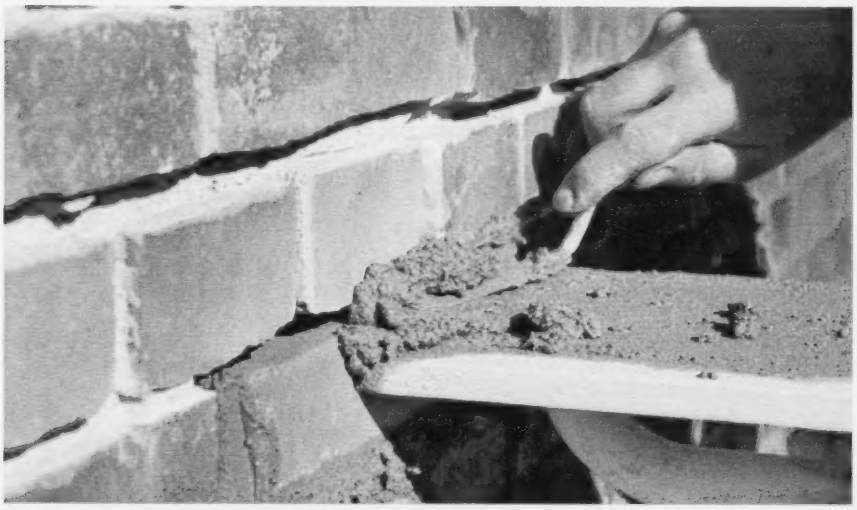
This year, the Commission's inquiries into fairness issues decreased by 20 per cent from the year before. We conducted 309 inquiries in 2011 compared with 386 inquiries in 2010. However, the chart shows that 2010 was an exceptional year.



Another measure of the Commission's work is to look at the number of issues that required some action by the WSIB to resolve an identified fairness concern.



Overall, the WSIB is doing a better job of addressing fairness issues at the first instance. And, when the Commission does become involved, the WSIB takes quick action. The Commission resolved most complaints within three days.



SUBJECT MATTER OF COMPLAINTS

Top 10 ranking of complaints by subject

2011		2010
1	Benefits	1
2	Health care	2
3	Appeal process	4
4	Work reintegration	–
5	Return-to-work	5
6	Non-economic Loss	6
7	Labour market re-entry	3
8	Employer assessment issues	8
9	Permanent disability	9
10	Earnings basis	–

FAIRNESS CATEGORIES

The Commission captures information about fairness issues broken down into four categories: delay, communication, decision-making process and behaviour. We monitor these numbers to identify trends in complaints.

Fairness Category	2011		2010	
	Numbers	Per cent	Numbers	Per cent
Delay	890	35%	817	36%
Communication	316	12%	165	7%
Decision-Making Process	282	11%	361	16%
Behaviour	156	6%	132	6%
Non-Mandate	923	36%	811	35%
Total	2,567		2,286	

Delay

Delay issues always constitute the highest number of complaints. The total number of delay complaints decreased in 2011 to 35 per cent of all incoming issues, down from 36 per cent in 2010.

However, complaints about delays in adjudication became one of the main concerns in 2011, increasing to 224 complaints, a 39 per cent increase from 2010. Delays in returning telephone calls increased by 15 per cent in 2011 to 253 complaints compared with 220 complaints in 2010.

"I expect you receive a lot of complaints, but not compliments. I want you to know how much I appreciate your office and the assistance you gave me."
INJURED WORKER

Communication

The Commission received 316 complaints about communication issues, primarily about unavailable or unclear communication. The category includes failure to issue decision letters or failure to give reasons for decisions. This is a significant increase compared to the 165 complaints received in 2010.

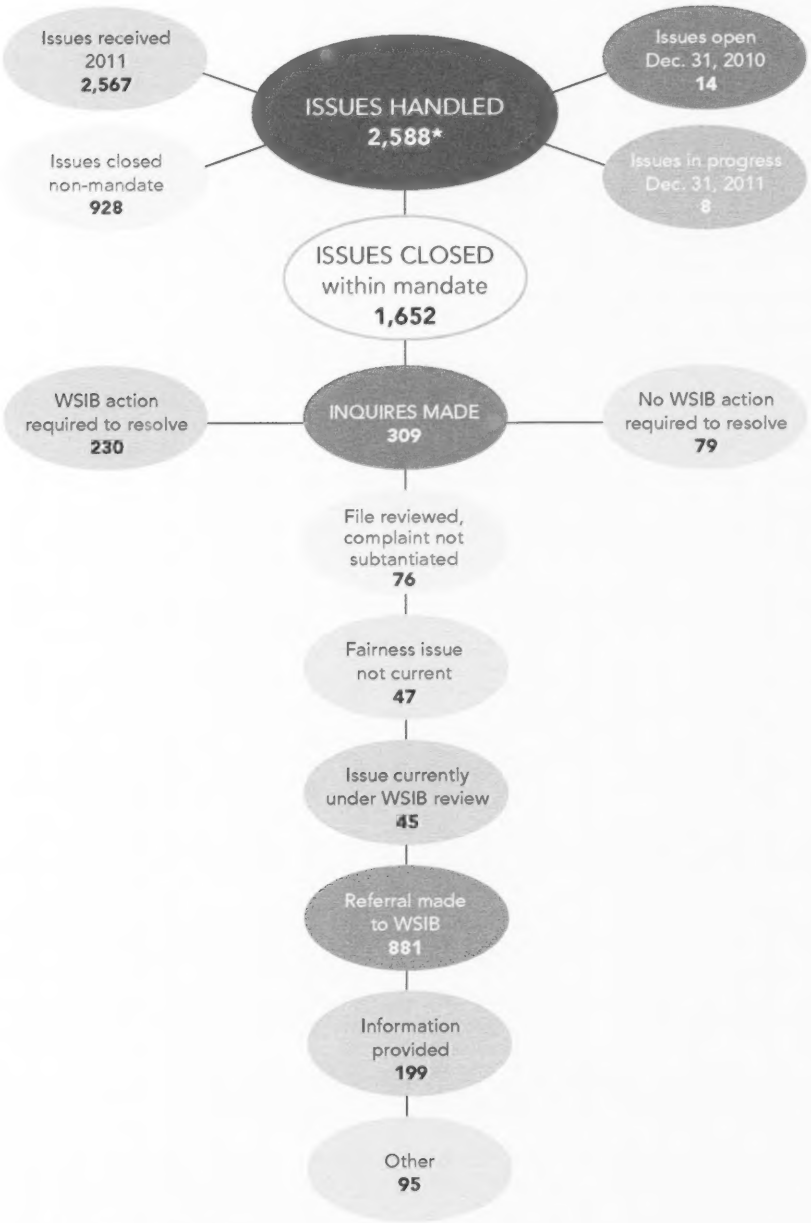
Decision-making process

The Commission received 282 complaints about the decision-making process, a decrease of 22 per cent from 2010. Of those complaints 58 related to arbitrary decision-making and 84 concerned lack of notice that a decision was being made or incomplete decision-making.

Behaviour

Complaints about the behaviour of WSIB staff include unprofessional behaviour and critical comments. The percentage of complaints remained the same as in 2010 (six per cent) but the numbers increased in 2011 to 156 complaints from 132 complaints in 2010.

OVERALL COMPLAINT RESOLUTION OUTCOMES


Issues received 2011 2,567
ISSUES HANDLED 2,588*
Issues open Dec. 31, 2010 14
Issues closed non-mandate 928
Issues in progress Dec. 31, 2011 8
ISSUES CLOSED within mandate 1,652
WSIB action required to resolve 230
INQUIRES MADE 309
No WSIB action required to resolve 79
File reviewed, complaint not subtantiated 76
Fairness issue not current 47
Issue currently under WSIB review 45
Referral made to WSIB 881
Information provided 199
Other 95

* Includes 7 re-opened issues

ISSUES RECEIVED BY SECTOR

WSIB Sector	Issues Received	Issues Closed *Specialists' Inquiries			
		Mandate	*	Non-Mandate	Total
ODSS/Permanent Benefit Services	278	218	(61)	64	282
Construction/ Transportation (Toronto)	208	149	(32)	60	209
Ottawa /Kingston	198	149	(16)	50	199
Hamilton/St. Catharines/Primary Metals	188	125	(35)	65	190
Industrial (Toronto)	168	109	(22)	60	169
Toronto/ Services/ Health Care	165	109	(12)	56	165
Initial Entitlement	137	82	(8)	55	137
Kitchener/Guelph/ Agriculture	129	86	(14)	45	131
Government Services (Toronto)	122	84	(10)	40	124
London	89	54	(4)	38	92
ODSS/Serious Injury Services	86	60	(15)	26	86
Sudbury/North Bay/Timmins/ Mining	75	45	(7)	29	74
Corporate Services/Appeals	71	61	(18)	10	71
Thunder Bay/SSM/Forestry/Pulp/ Paper	71	44	(8)	27	71
Windsor	71	49	(8)	22	71
ODSBP	54	44	(12)	12	56
Employer Service Centre	42	25	(3)	17	42
Work Transition Specialist Program	39	25	(4)	14	39
Permanent Impairment Program	30	20	(2)	9	29
Secondary Entitlement	27	19	(-)	8	27
Return to Work Program	14	12	(-)	2	14
Corporate Services/Business Services	13	12	(1)	1	13
Corporate Services/Employer Audit	8	6	(3)	2	8
Corporate Services/ Central Claims Processing	7	7	(2)	-	7
Corporate Services /Collections	7	2	(-)	5	7

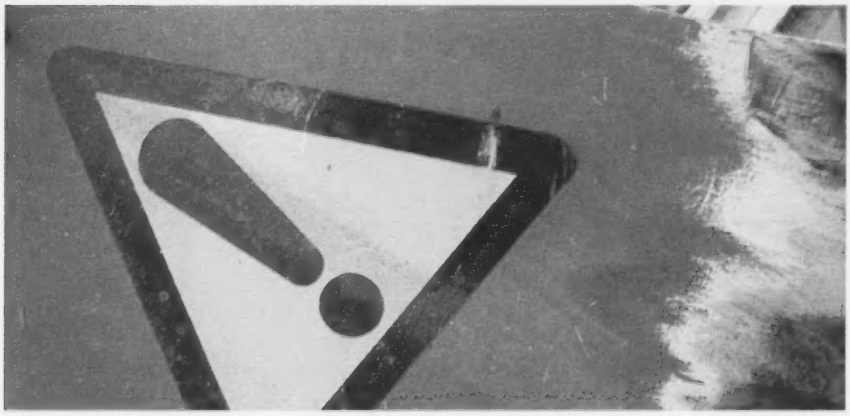
WSIB Sector	Issues Received	Issues Closed *Specialists' Inquiries			
		Mandate	*	Non-Mandate	Total
Corporate Services/ Regulatory Services	4	3	(-)	1	4
Finance/Treasury	4	3	(1)	1	4
Health Services/Program & Provider Effectiveness	4	4	(3)	-	4
Corporate Services/Legal Services	3	2	(1)	1	3
Health Services/Clinical Services	3	2	(2)	-	2
Corp Executive/Legal Services	2	2	(2)	-	2
Corp Executive/ Office of the President	2	2	(-)	-	2
Health Services/ Health Services Management	2	1	(1)	1	2
Prevention/ System Collaboration	2	1	(-)	1	2
Corp Executive/ Office of the Chair	1	1	(-)	-	1
Corporate Services/ Customer Experience Office	1	1	(1)	-	1
Finance/ Actuarial Services	1	1	(-)	-	1
Health Services/ Professional Practice	1	1	(-)	-	1
Prevention/ Prevention Standards	1	-	(-)	1	1
Work Reintegration Complaints Office	1	1	(-)	-	1
Regulatory Services/ Compliance	1	-	(-)	1	1
Not Applicable to WSIB	63	-	(-)	63	63
Not Determined	150	31	(1)	117	148
WSIAT	24	-	(-)	24	24
Total	2,567	1,652	(309)	928	2,580

Education and Outreach

EDUCATION continues to be an important part of the Commission's work. In 2011 the Commission provided eight Fairness Sessions for WSIB staff: five for new eligibility adjudicators, two for telephone enquiry clerks and one for new account specialists.

OUTREACH

- The Commission released its first e-newsletter in the fall, and we announced that we will begin taking complaints by email early in 2012.
- The commissioner met with the staff of Injured Workers' Consultants legal clinic in March.
- The deputy commissioner conducted two workshops for the Ontario Network of Injured Workers Group conference in November.
- The Commissioner met by teleconference in June, September and November with the Fairness Working Group. The group is composed of fair practices' officers at workers' compensation boards across Canada.
- In May, the commissioner attended the Forum of Canadian Ombudsman Conference in Vancouver and participated in a workshop on key ingredients for successful Ombuds programs.



Budget

Description	2012 Budget	2011 Actual	2011 Budget
Salaries – permanent	660,233	569,001	657,902
Salaries – temporary	127,211	81,160	132,369
Total salaries	787,444	650,161	790,271
Benefits	98,223	83,322	88,728
Total salaries and benefits	**885,667**	**733,483**	**878,999**
Equipment and maintenance	32,680	14,565	25,000
Voice and data communications	33,600	18,685	33,600
Publication and mailing	24,600	2,770	31,200
Occupancy cost	3,600	–	3,600
Travel	65,000	6,123	69,000
Supplies and services	47,600	16,594	48,600
Staff training	24,000	5,660	27,000
Specialized services	–	89	–
Other operating expenses	30,600	66	30,600
Depreciation and amortization		29,000	
Total non-salary expenses	261,680	93,552	268,600
Total operating expenses	**1,147,347**	**827,035**	**1,147,599**

The Commission voluntarily decreased its spending in certain areas in light of new government guidelines. The Commission also reduced its spending on part-time (temporary staff), and there was one staff vacancy in 2011.

2011

FAIR PRACTICES COMMISSION ANNUAL REPORT

www.fairpractices.on.ca